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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,982	04/03/2002	Evelyne Lopez	15675P398	4095

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EXAMINER

FLOOD, MICHELE C

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/089,982

Applicant(s)

LOPEZ ET AL.

Examiner

Michele C. Flood

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 24,25,27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I, Claims 1-23 and 26 on January 20, 2004 is acknowledged. The traversal is on the ground that the Examiner is misinterpreting Rule 13.2 PCT. This is not found persuasive because the present application is being treated under PCT rules, and not under U. S. practice, as alleged by Applicant. As set forth in the previous Office action under PCT practice, Applicant is entitled to a method of making a product, and a method of use thereof.

The requirement is still deemed proper and is therefore made FINAL.

**Claims 1-23 and 26 are under examination.**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered vague and indefinite by the use of "comprises" and "consisting" because the use of both terms makes the claim inconsistent. The lack of clarity makes the claim confusing.

Art Unit: 1654

Claim 1 recites the phrases "in reducing", "in bringing", and "in recovering". It is suggested that Applicant delete "in" so that the limitations of the claim is drafted to include a positive statement.

Claim 1 recites the limitation "the desired composition" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 is rendered vague and indefinite by the phrase "an extracting agent in the form of an aqueous-glycolic solution of at least one collagen, or at least one proteoglycan or of a mixture thereof" because it is unclear as what comprises the aqueous solution. Does the aqueous solution comprise a glycol solution that contains at least one collagen or at least one proteoglycan or a mixture thereof. Or does the extracting agent comprise a proteoglycan or a mixture or a proteoglycan in admixture with an aqueous-glycolic solution or at least one collagen? The lack of clarity renders the claim ambiguous.

The term "close contact" in claims 1 and 13 is a relative term which renders the claims indefinite. The term "close contact" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant may overcome the rejection by deleting "close".

Claim 4 is rendered vague and indefinite by the phrase "weight ratio of between approximately 1:100 and approximately 100:1" because the use of both terms makes the claim inconsistent. The lack of clarity makes the claim confusing.

Art Unit: 1654

With regard to Claim 7, the use of the trademark, COLLAGENE NATIF MARIN-Code 690™, has been noted in this application. Trademarks should be capitalized wherever they appear and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. It is suggested that each letter of the trademark be capitalized or include a proper trademark symbol, such as ™ or ®.

Claim 7 is rendered vague and indefinite by the trademark terms PANCOGENE®MARIN and COLLAGENE NATIF MARIN-Code 690™. The relationship between a trademark and the product it identifies is often indefinite, uncertain, and arbitrary. The formula or characteristics of the product may change from time to time and yet it may continue to be sold under the same trademark. In patent specifications, every element or ingredient of the product should be set forth in positive, exact, intelligible language, so that there will be no uncertainty as to what is meant. Arbitrary trademarks which are liable to mean different things at the pleasure of manufacturers do not constitute such language. Ex Parte Kattwinkle, 12 USPQ 11 (Bd. App. 1931).

Regarding Claim 7, the parentheses that abut the trademark terms should be deleted to place the claim in proper grammatical form.

Claim 16 recites the limitation "A liquid phase" in line1. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "A solid phase" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 1654

Claim 18 is rendered indefinite by the phrase "which can be obtained" because the claimed composition is either obtained or not obtained. Applicant may overcome the rejection by deleting "which can be".

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

#### ***Claim Objections***

Claims 5-23 and 26 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Art Unit: 1654

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele C. Flood whose telephone number is (571) 272-0964. The examiner can normally be reached on 7:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Michele C. Flood.*  
**MICHELE FLOOD**  
**PATENT EXAMINER**

MCF

March 8, 2004